

**ASSEMBLY BILL**

**No. 208**

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**Introduced by Assembly Member Knox**

January 25, 1999

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An act to add Section 190.03 to the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

AB 208, as introduced, Knox. Murder: punishment.

(1) Existing law provides that the penalty for a defendant who is found guilty of murder in the first degree is death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. If one or more special circumstances is found to be true, a defendant who is found guilty of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole. In the absence of a finding of any of these special circumstances, the penalty for first degree murder is imprisonment in the state prison for life without the possibility of parole if (1) the victim is the operator or driver of a public transportation vehicle used for the transportation of persons for hire or a station or ticket agent for the entity providing this transportation, (2) the victim was intentionally killed while engaged in the performance of his or her duties, (3) the defendant knew or reasonably should have known that the victim was a person so engaged, and (4) a special circumstance to this effect has been charged and found to be true.

This bill would provide that the penalty for a defendant who is found guilty of murder in the first degree is imprisonment in the state prison for life without the possibility of parole if the victim was intentionally killed because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation, and this allegation has been charged and found to be true.

(2) Existing law, with regard to so-called hate crimes, prescribes various punishments for criminal acts committed "because of" a person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Existing law, as interpreted by the California Supreme Court, further provides that the phrase "because of," as used in hate crime statutes, means the bias motivation must have been a cause in fact of the offense, and that when multiple concurrent causes exist, the bias motivation must have been a substantial factor in bringing about the offense.

This bill would define "because of" for purposes of the provision described in (1) to conform with the decisions of the California Supreme Court and would provide that the definition is declaratory of existing case law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 190.03 is added to the Penal  
2 Code, to read:  
3 190.03. (a) A person who commits first-degree  
4 murder shall be punished by imprisonment in the state  
5 prison for life without the possibility of parole, if the  
6 defendant intentionally killed the victim because of the  
7 victim's disability, gender, or sexual orientation or  
8 because of the defendant's perception of the victim's  
9 disability, gender, or sexual orientation.  
10 (b) The term authorized by subdivision (a) shall not  
11 apply unless the allegation is charged in the accusatory  
12 pleading and admitted by the defendant or found true by  
13 the trier of fact.

1 (c) For the purpose of this section, “because of” means  
2 the bias motivation must be a cause in fact of the offense,  
3 whether or not other causes also exist. When multiple  
4 concurrent motives exist, the prohibited bias must be a  
5 substantial factor in bringing about the particular result.  
6 This subdivision does not constitute a change in, but is  
7 declaratory of, existing law as set forth in *In Re M.S.*  
8 (1995) 10 Cal.4th 698, 716-720 and *People v. Superior*  
9 *Court of San Diego County (Aishman)* (1995) 10 Cal.4th  
10 735.

11 (d) Nothing in this section shall be construed to  
12 prevent punishment instead pursuant to any other  
13 provision of law that imposes a greater or more severe  
14 punishment.

